

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HILARY A. BEST,

Plaintiff,

-against-

JAMES MERCHANT, *New York City Correction
Officer, Shield #8237, et al.,*

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 6/8/2023

1:21-CV-779

ORDER OF SERVICE

GREGORY H. WOODS, United States District Judge:

In his second amended complaint in this case, *pro se* Plaintiff Hilary Best—who has been granted leave to proceed *in forma pauperis* (“IFP”), Dkt. No. 3—listed several defendants as unidentified “John and Jane Doe” defendants. *See* Dkt. No. 58. In resolving Defendants’ motion to dismiss that complaint, this Court issued a *Valentin* order requiring the Corporation Counsel of the City of New York to provide the names and service addresses of those unidentified defendants, to the extent they could be identified. *See* Dkt. No. 85. Corporation Counsel provided the names of two such defendants, former Correction Officers David Hayes and Steven Acosta, by letter on April 26, 2023. Dkt. No. 100. In his fourth amended complaint, filed on May 31, 2023, Mr. Best named former Officers Hayes and Acosta as Defendants. *See* Dkt. No. 108 at 4.1 And in a letter filed on June 7, 2023, Corporation Counsel provided the addresses at which these former officers can be served. *See* Dkt. No. 110.

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.¹ *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d

¹ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the original complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the fourth amended complaint (Dkt. No. 108) until the Court reviewed the fourth amended complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date that summonses are issued.

Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP).

To allow Plaintiff to effect service of the fourth amended complaint (Dkt. No. 108) on former Officers Hayes and Acosta through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of those defendants. The Clerk of Court is further instructed to issue a summons for each of those defendants and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service of the fourth amended complaint (Dkt. No. 108) on those defendants.

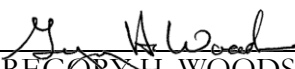
If the fourth amended complaint (Dkt. No. 108) is not served on those defendants within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Court also directs the Clerk of Court to issue summonses for Officers David Hayes and Steven Acosta; complete USM-285 forms with the service addresses of those defendants; and deliver all documents necessary to effect service of the fourth amended complaint (Dkt. No. 108) on those defendants to the U.S. Marshals Service.

Dated: June 8, 2023
New York, New York



GREGORY H. WOODS
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Correction Officer David Hayes, Shield No. 14938
119 De Haven Drive
Yonkers, New York 10703
2. Correction Officer Steven Acosta, Shield No. 15235
Department of Correction
75-20 Astoria Blvd., Suite 305
East Elmhurst, New York 11370
ATTN: Legal Division